

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 222 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASHOKBHAI C CHAUHAN

Appearance:

MR HH PATEL, ld.APP for appellant
MR NITIN M AMIN for Respondents No. 1-2
MR SANJAY M AMIN for Respondents No. 1-2

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/01/2002

ORAL JUDGEMENT

Both the respondents were tried for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code in Sessions Case No.35 of 1991 by the learned

Asstt. Sessions Judge, Ahmedabad (Rural), who by his judgment and order dated 1.8.1991 convicted them for the offence under Section 376 and sentenced them to suffer Rigorous Imprisonment for seven years and to pay a fine of Rs.3,000/- in default, to undergo further Rigorous Imprisonment for six months. Both the respondents were acquitted for the offence under Section 506(2) of the Indian Penal Code. Against the said decision, the respondents preferred appeal being Criminal Appeal No.24 of 1991 before the Sessions Court, and the learned Addl. Sessions Judge, Ahmedabad (Rural) by judgment and order dated 7.12.1991 allowed the appeal and acquitted both the respondents. The State has filed the present appeal challenging the said order of acquittal passed against the respondents.

2. The prosecutrix Chandrika was serving with the father of accused no.1 and she was doing the work of grazing cattle and other petty works. It is her case that while she was going to the field for grazing the buffaloes, both the accused were following her six months prior to the filing of the FIR in the noon time. According to her, both the accused committed rape on her in the Water Thaliya. She was threatened by the accused to kill her if anybody was informed about their acts. It is further the say of the prosecutrix that both the accused were doing the same act almost every day, at least three to four times a week. The prosecutrix has alleged that as she was not having menstruation for last three-four months, on 15.8.1990, she informed her mother about the rape having been committed on her by the accused. Thereafter, on 16.8.1990, she filed the FIR, i.e. six months after the incident.

3. The police after investigation submitted the charge sheet for the aforesaid offences.

4. Mr.H.H.Patel, learned APP after having taken me through the entire evidence, submitted that the respondents in the instant case have taken undue advantage of illiteracy of the prosecutrix, committed rape on her under threat to kill her and her parents. Under the circumstances, a serious view is required to be taken in the matter.

5. In the instant case, the prosecution, in order to make good the case against the accused, has examined the prosecutrix, PW4-Exh.12 and Kapilaben, PW5-Exh.14, mother of the prosecutrix, two panchas, namely, Ambalal and Atmaram to prove the panchnama of the scene of offence who have not supported the prosecution and they have been

declared hostile. Dr.Ashwinbhai Keshavlal, PW3-Exh.9 who is examined in the instant case, is running a private dispensary at village Kashindra. According to him, when he examined the prosecutrix on 17.8.1990, she was having pregnancy of four months. Dr.Rameshchandra Shah, PW6-Exh.16, Medical Officer of the Civil Hospital in his deposition has also found the fact that the prosecutrix was pregnant when he examined her on 17.8.1990. He has stated that he examined the prosecutrix after six months and obviously, he neither noticed any mark of external injuries on her body nor stains of blood or semen on the person of the prosecutrix. The Medical evidence in the instant case does not throw light regarding the rape having been committed on the prosecutrix. True, in the instant case, the prosecutrix in her evidence has tried to involve both the accused by stating that six months prior to the filing of the FIR, both the accused committed rape on her by throwing her into the water Thaliya by following her when she had gone to graze the cattle. She has further stated that the accused had threatened her not to tell anybody about their acts, otherwise, she would be killed and her parents will be driven out of the village. In view of the fact that the prosecutrix being an illiterate adivasi girl and was doing the work at the house of the father of the accused no.1 and 2, who are cousin brothers and in dominating position, this Court could have accepted the version of the prosecutrix regarding rape having been committed on her under threat.

However, after considering the circumstances hereinafter referred to will make the entire prosecution case unnatural and unbelievable. In the instant case, there is no documentary evidence regarding the age of the prosecutrix. The age certificate in the form of School Leaving Certificate and/or Birth Certificate is not on record. Therefore, the Court has to rely on the oral version of the witnesses. The prosecutrix in her evidence has stated that she was 18 or 19 years of age. Her mother, Kapilaben in her evidence has given the age of the prosecutrix as 20 years. According to her, the prosecutrix was the eldest of her three daughters. She has stated about her age to be about 30 to 35 years. Even if the say of Kapilaben regarding the age of the prosecutrix is not accepted, it would in any case be between 16 and 20 years. As per the evidence of Dr.Rameshchandra Shah at Exh.16, the prosecutrix was moderately built and nourished, the breasts were developed, the external genital was also well developed, and public hair was blackish. Thus, from the evidence on record, it can be safely concluded that the prosecutrix

was more than 16 years of age. As per the say of the prosecutrix, the accused used to commit rape on her almost every day and at least three to four times a week before about three-four months. With the act of rape which was continued for all this time, it is difficult to believe that the prosecutrix could not inform her own parents. The so-called explanation given by her that she was made to do the act under threat also does not appear to be believable for the simple reason that ultimately she did inform her mother when her mother inquired as to whether her menstruation had been stopped. In other words, she could not have informed her own parents till the menstruation was not stopped otherwise she would have continued with the said act as a willing partner. Thus, for three to four months as a consenting party, she allowed the accused to have sex with her. Filing of the complaint after six months is sufficient for this Court to hold that the prosecutrix was a consenting party.

It is to be noted that the accused are acquitted of the offence under Section 506(2) of the Indian Penal Code by the learned trial Judge and, therefore, the prosecution has also not established the threat alleged to have been given by the accused. There is no appeal against the said order of acquittal for the offence under Section 506(2) of the Indian Penal Code. Thus, rape under threat is not proved and the sexual act is continued for three to four times a week for three to four months and it cannot be said that the accused committed rape on the prosecutrix. In my opinion, the learned appellate Judge was justified in acquitting the accused for the offence under Section 376 of the Indian Penal Code. Suffice it to say that I am in full agreement with the reasoning of acquittal recorded and the ultimate conclusion reached by the learned appellate Judge. Furthermore, this being an appeal of acquittal, in absence of any cogent evidence on record, it is not possible for me to take a different view in the matter. There being no substance, this appeal is dismissed.

(Kshitij R. Vyas, J.)

Sreeram.